

IN THE COURT OF APPEALS OF IOWA

No. 0-776 / 10-1521
Filed November 10, 2010

**IN THE INTEREST OF M.R., M.R., M.K., and M.K.,
Minor Children,**

S.R.R., Mother,
Appellant.

Appeal from the Iowa District Court for Butler County, Peter B. Newell,
District Associate Judge.

A mother appeals the district court's order terminating her parental rights.

AFFIRMED.

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, and Brett Schilling, Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Greg Lievens, County Attorney, and Martin Petersen, Assistant County Attorney, for appellee State.

Lana Luhning of Laird & Luhning, Waverly, for appellee father of M.R. and M.R.

David Kuehner, Cedar Falls, for appellee father of M.K. and M.K.

Michael Treinen of Dunakey & Klatt, Waterloo, for interested party.

Bruce Toenjes, Shell Rock, for interested party.

Marilyn Dettmer of Dettmer Law Firm, Charles City, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Samantha is the mother of four children—Miles, born in 2002, Madison, born in 2003, Mya, born in 2008, and Mason, born in 2009. Samantha has been involved with the Iowa Department of Human Services (DHS) on and off since approximately one month after Miles was born in 2002, largely because of her continued use of methamphetamine. Miles and Madison were adjudicated to be children in need of assistance (CINA) on July 20, 2005. Mya was adjudicated CINA on April 9, 2009. Mason was adjudicated CINA on August 6, 2009. The children have been removed from Samantha's home since July 31, 2009.

The State filed a petition for termination of Samantha's parental rights on June 30, 2010.¹ A permanency hearing took place July 28, 2010, and the termination trial was scheduled for August 25, 2010. The state presented no evidence to the trial court at the termination hearing because Samantha consented to termination of her rights when she arrived at the courthouse for the trial.² However, the juvenile court took judicial notice of the CINA files and made findings on the other grounds for termination alleged in the State's petition on the basis of the evidence presented at the permanency hearing and statements made by Samantha the morning of the termination trial.

The juvenile court ordered termination of Samantha's rights on September 2, 2010, pursuant to Iowa Code section 232.116(1)(a), (f), (h), and (l) (2009). Samantha now appeals, arguing: (1) the juvenile court erred in accepting her

¹ Samantha's parental rights are the only rights at issue on appeal.

² Samantha's counsel presented a certificate documenting Samantha's completion of a relapse program.

consent to termination, as the court was aware she had earlier consumed illegal substances and therefore she could not have consented voluntarily or intelligently to the termination of her parental rights; (2) the court erred in ordering termination without affording her the right to present evidence on her behalf; and (3) her counsel was ineffective for allowing the court to accept her consent when he knew she had recently used illegal substances.

II. Standard of Review

We review proceedings to terminate parental rights de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We review the facts as well as the law and adjudicate parents' rights anew. *Id.* We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995).

III. Merits

Samantha argues the juvenile court erred in accepting her consent to termination of her parental rights when the court knew she had recently used illegal substances. She states that because of her recent drug use, she could not have voluntarily or intelligently consented to the termination of her parental rights.

The hearing on the termination of Samantha's parental rights was scheduled for and began at 9:00 a.m. When Samantha arrived at about 9:45 a.m., the court took a brief recess to allow her to speak with her attorney. Samantha's counsel asked to confer with his client about the news that the father

of two of the children had given consent to termination at the hearing. The father of the other two children previously had consented to termination. When the court came back on the record, the judge stated,

The court was advised there was some concern that [Samantha] might be under the influence of a controlled substance. The court is advised that [a DHS caseworker] did speak to [Samantha]. [Samantha], I believe, acknowledged that she had not used any controlled substances since approximately midnight.

The court then addressed Samantha:

Q. [Samantha], is that correct? That you have not used any controlled substances since midnight? A. Yeah.

Q. It is my understanding that you acknowledge that you have been using controlled substances in the past week? . . . A. Yes.

Q. And [Samantha], it is also my understanding that you are now willing to voluntarily consent to termination of your parental rights? A. Yeah.

Q. Do you understand that this means that you will no longer have any legal rights to visit or parent these children? A. Yeah.

Q. Has anyone threatened you in any way or put you under any kind of pressure in order to get you to admit or agree to this termination of your parental rights? A. No.

Q. Are you doing this voluntarily and of your own free will? A. Yes.

Q. Do you believe that this would be in your children's best interests? . . . A. Yes.

The judge informed Samantha, "I am going to terminate your parental rights." The judge continued, "I'm not going to issue a ruling today. . . . [O]nce that ruling is filed, you then have 15 days to appeal." A week later, the district court filed its ruling terminating the parental rights of Samantha and both fathers involved in the proceedings. Samantha did not revoke her consent to termination in the intervening days, nor did she file any post-trial motion regarding her consent.

In its ruling, the court noted that at the time of her consent to terminate, Samantha “indicated that she was not currently high.” The juvenile court stated in its termination order, “The court personally addressed Samantha . . . and determined that her consent was being made voluntarily and intelligently.”

We give weight to the district court’s findings regarding Samantha’s consent. The district court was aware of Samantha’s recent drug use and explicitly found that Samantha’s consent was voluntary and intelligent. The court did not err in accepting Samantha’s consent after determining that she was not high at the time of trial and that her consent was voluntary and intelligent. Because the court properly accepted Samantha’s consent, her claims regarding her ability to present evidence and ineffective assistance of counsel fail.

AFFIRMED.